

### **REMARKS**

Reconsideration of the above mentioned application is respectfully requested in view of the above amendments, the declaration of co-inventor and CEO of the assignee Snapware Corporation (“Snapware”) submitted herewith and the following remarks.

Claim 13 (dependent upon claims 14-16) was rejected as indefinite on the grounds that independent claim 11 defines the angle's  $\theta$  and  $\lambda$  as being equal to each other. It is respectfully submitted that independent claim 11 does not call for the angles to be equal. Claims 13-16 are definite and in compliance with 35 USC Section 112.

Claims 1-2, 4-7, 9-12 and 17 were rejected as being anticipated by McNab US 6,050,434 on the grounds that the reference discloses a cap body with an upwardly extending flange (base of 17) and a lid with a downwardly extending flange 44. Claim 1, as amended, calls for the cap body to form an upwardly extending flange terminating in a peripheral rim (18b) with an inner surface (18a) extending downwardly from the rim providing unobstructed access to the container interior. The McNab cap body has no such structure. The upwardly extending cap flange of McNab, which apparently mates with lid flange 44, does not terminate in a rim with an inner surface extending downwardly therefrom to provide an unobstructed opening to the container interior. Instead a spout, with a small discharge opening, extends upwardly from the McNab cap flange. The cap body as called for in claim 1 does not read on the McNab structure. As is pointed out by Mr. Lown, the McNab is “neither designed for nor would it be useful as a closure for wide mouth containers.”

In addition to the above, claim 1 calls for the interlocking flanges in their closed position locking the assembly together and providing the only sealing means for the container.

The McNab closure cap relies on the upper spout cover portion to occlude the discharge opening 18 in the spout.

Claims 1-2, 4-7, 9-12 and 17 are not anticipated by McNab. With respect to obviousness there is no teaching or suggestion in McNab which would cause one of ordinary skill in the art to modify his structure to be compatible with wide mouth containers or to conform to the structure as called for in the above claims. Indeed to modify the McNab closure with an inner surface extending downwardly from the cap flange to provide unobstructed opening to the container interior would defeat the purpose of the McNab device, i.e., to dispense liquid products such as shampoos, lotions, etc. from the spout. Claims 1-2, 4-7, 9-12 and 17 are patentable over the McNab reference.

Claims 1-10 were also rejected as covering a container cap assembly which would have been obvious to one of ordinary skill in the art in view of Snapware's earlier Quinn et al U.S. Patent No. 5,582,314 ("314 patent) and Anderson U.S. Patent No. 4,380,304 on the grounds that the '314 patent discloses a cap with a hinged lid, but no interlocking sealing flanges while Anderson discloses a container lid arrangement with interlocking flanges (24) and (88). The deficiencies of the '314 closure cap with respect to the ability to compete cost wise with conventional screw-on lids is discussed in the Description of the Prior Art section of this application and in Mr. Lown's declaration at paragraph 10. The Anderson container and push on lid relies on the lids stub wall (90), its sealing ribs (92, 94, 96) and the container inner wall to provide the sealing action (4:16-25). The Anderson patent states that the annular catch face (88) is adapted to engage the face (32) of the bead (24) to form part of the annular lock but there is no teaching that this engagement provides the sealing action. In any event, there is no teaching in the Anderson reference as to how such annular

faces (88) and (32) would have to be designed to provide a reliable seal if the lid was hinged to the container. The angles of the flange sealing surfaces are important in providing a reliable seal for a hinged wide mouth container closure and the apparent angles of the Anderson flanges referred to in the Office Action are clearly outside the ranges called for in the dependent claims.

In addition, claim 1 calls for the interlocking flanges in their closed position providing the only sealing means for the container.

There is no teaching or suggestion in the references to remove the latching tongue and cooperating hook of the '314 cap assembly and replace the sealing gasket with the flanges 88 and 32 of Anderson. Such a modification would occur to one of ordinary skill in the art only as a result of hindsight, i.e., after reviewing applicants' invention. Claims 1-10 are patentable over the '314 and Anderson patents.

Claims 11-19 were rejected as unpatentable over the '314 patent in view of Tupper U.S. 2,690,861. As is pointed out in Mr. Lown's declaration in paragraph 11, the Tupper device does not rely on a flange spaced inwardly from the lid rim to seal against a cap body flange, but instead relies on the peripheral wall of the cap and a rib on the insert collar as well as a tapering plug on the cap to provide redundant seals. In addition, claim 11 calls for the cap body and lid flanges in their closed position to provide the only closure and locking means for the container cap assembly. This structure is missing from Tupper. The plug 22 or 33 of Tupper close the opening to the container.

The '314 device, as suggested to be modified in the Office Action, i.e., by forming a sealing surface on the lid rim and a flange on the cap would still be missing the above elements. In addition, there is no teaching or suggestion in either reference for this change or provide any incentive for a

skilled artisan to so modify the '314. Applicants do not agree that it would be obvious to configure the beads at any angle. The angles of the sealing surfaces to provide a reliable closure for wide mouth containers are important (Lown Decl. Paragraph 10). Tupper teaches away from applicants' invention by, among other things, teaching the use of a plug to close the opening in the container.

Applicants' invention has solved a real world problem as attested to by the commercial success of the invention (Lown Decl. Paragraphs 6-8).

Sales of applicants simple hinged closure cap assembly and container of some \$150,000.00 since its recent introduction with sales expected to jump appreciably in 2005 should not be ignored.

See *In re Deminski*, 230 USPQ 313, 315 (Fed. Cir. 1986) where the court in reversing the Board of Appeals as to the patentability of certain claims noted:

We reverse the board's decision insofar as it affirms the examiner's rejection of claims 17, 18, and 21. The latter claims have the limitation that the valve sets in each valve chamber be connected in a way which will permit them to be withdrawn as a unit. There is nothing in the prior art references, wither singly or in combination, 'to suggest the desirability, and thus the obviousness,' of designing the valve assembly so that it can be removed as a unit.

...

... Pocock does not address Deminski's problem of how to remove a large and heavy valve assembly as a unit. Instead, Pocock teaches away from the invention of claim s 17, 18, and 21 of Deminski's patent application.

There was no suggestion in the prior art to provide Deminski with the motivation to design the valve assembly so that it would be removable as a unit. The board argues that if Pocock had

followed the ‘common practice’ of attaching the valve stem to the valve structure, then the valve assembly would be removable as a unit. The only way the board could have arrived at its conclusion was through hindsight analysis by reading into the art Deminski’s own teachings. Hindsight analysis is clearly improper, since the statutory test is whether ‘the subject matter as a whole would have been obvious at the time the invention was made.’

Applicants’ invention and particularly any obvious rejection must be viewed in the real world. *Panduit Corp. v. Dennison Manufacturing Co.* 227 USPQ 337, 348 (Fed. Cir. 1985).

See *Continental Can Co. USA, Inc. v. Monsanto Co.* 20 USPQ2d 1746, 1752 (Fed. Cir. 1991) where the court in reversing a summary judgment of invalidity stated:

The district court concluded that the structure in suit is simply a variation on known themes. It is in such circumstance that the objective indicia - the so-called secondary considerations - are most useful to the decision-maker. The significance of a new structure is often better measure in the market place than in the courtroom.

Thus when differences that may appear technologically minor nonetheless have a practical impact, particularly in a crowded field, the decision-maker must consider the obviousness of the new structure in this light. Such objective indicia as commercial success, or filling an existing need, illuminate the technological and commercial environment of the inventor, and aid in understanding the state of the art at the time the invention was made.

Applicant has solved a real world problem in providing a user friendly and reliable type closure cap for food storage and other containers which is competitive with ordinary screw-on lids.

The only prior art references, relied on in the Office Action, directed to a wide mouth container closure is the '314 patent and this closure does not meet the inventor's cost requirements. Digital photographs of the two container cap assemblies (as placed on a container) identified at paragraph 7 in Mr. Lown's declaration are attached hereto as Exhibit A. Applicants' counsel has requested our local associate to deliver container cap assemblies along with a wide mouth container to the Examiner.

It is believed that his application is now in condition for allowance and such action is courteously solicited. If applicants' attorney can be of any further assistance please call the undersigned at the number provided.

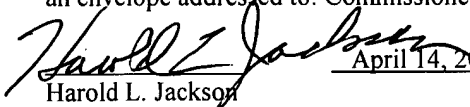
Respectfully submitted,

JACKSON LAW CORPORATION



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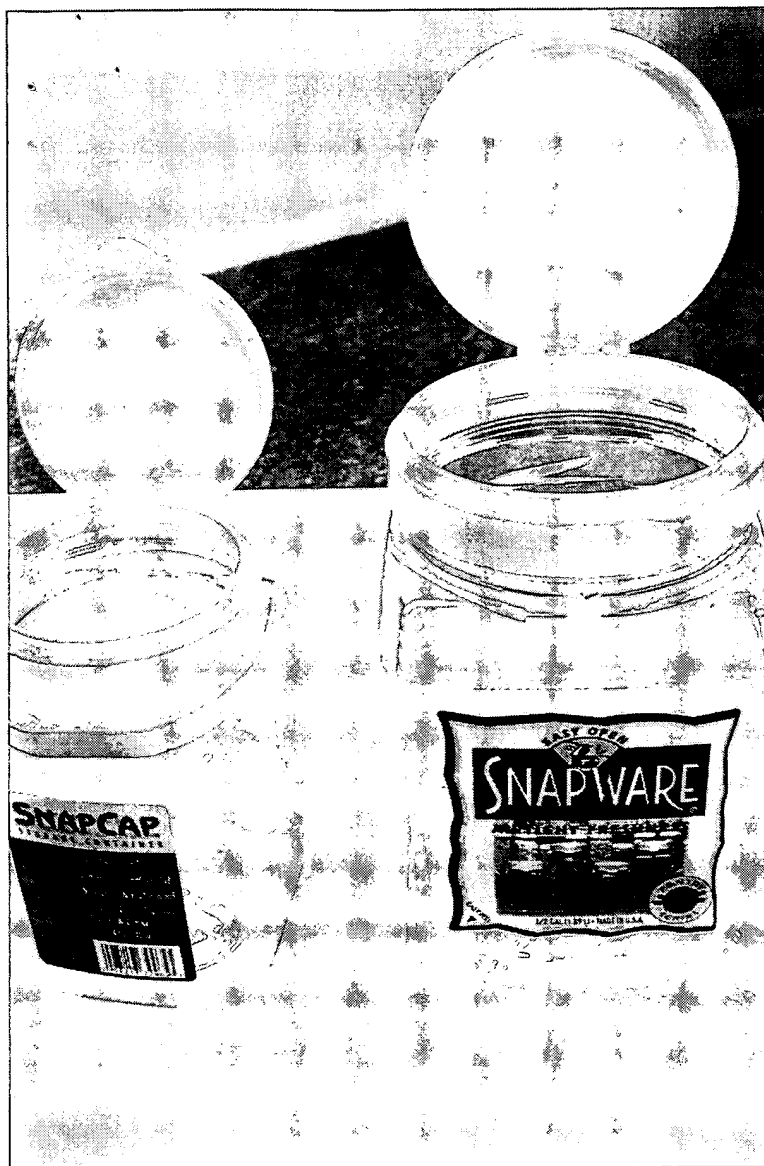
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 14, 2005.

  
Harold L. Jackson  
April 14, 2005



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Exhibit A



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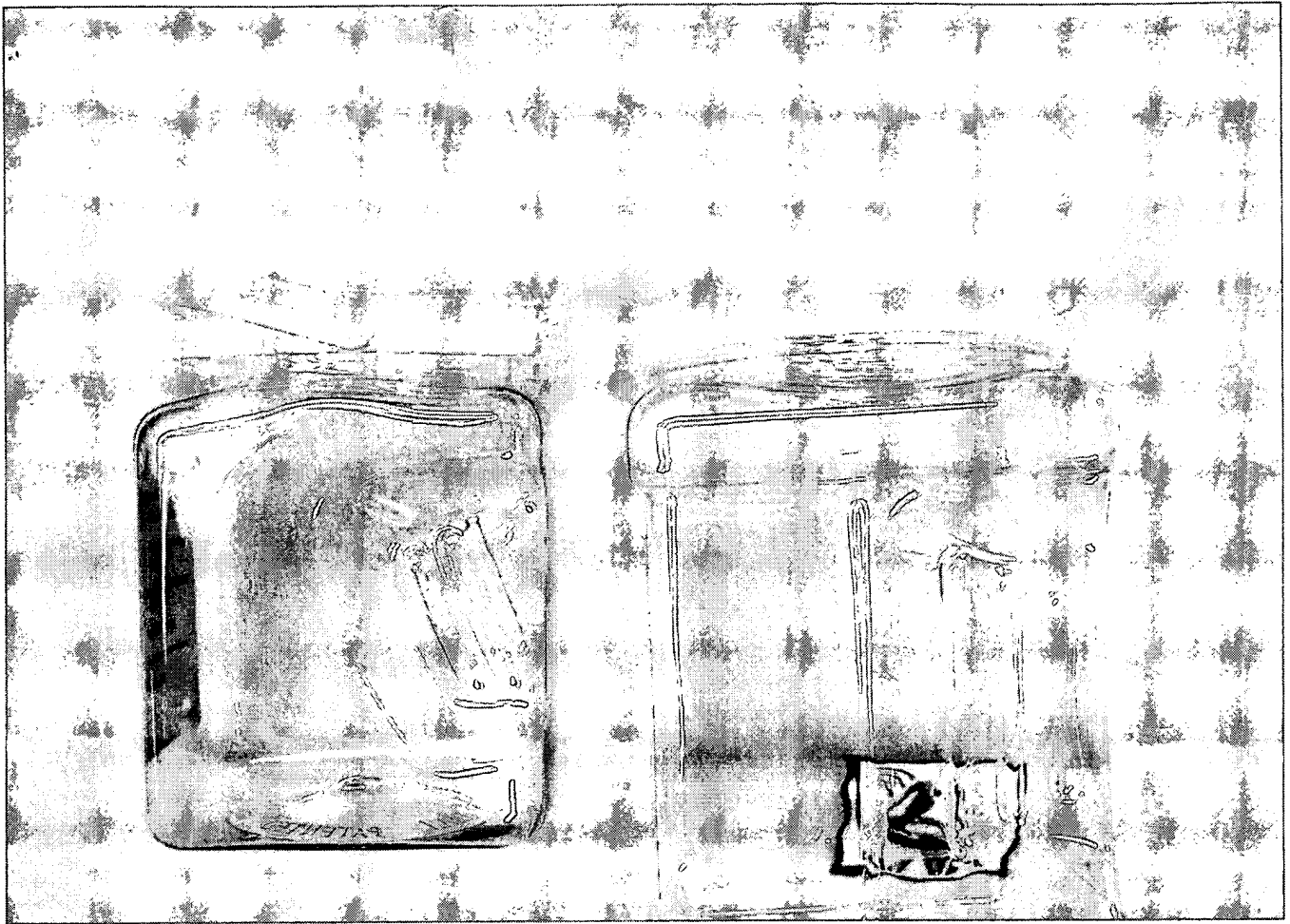


Exhibit A

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